

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9902 of 1996  
SPECIAL CIVIL APPLICATION No 9912 of 1996  
SPECIAL CIVIL APPLICATION NO.10266 OF 1996  
SPECIAL CIVIL APPLICATION NO.10600 OF 1995  
SPECIAL CIVIL APPLICATION NO.10615 OF 1995  
SPECIAL CIVIL APPLICATION NO.3502 OF 1996.  
SPECIAL CIVIL APPLICATION NO.140 OF 1996  
SPECIAL CIVIL APPLICATION NO.141 OF 1996  
SPECIAL CIVIL APPLICATION NO.142 OF 1996  
SPECIAL CIVIL APPLICATION NO.143 OF 1996.

For Approval and Signature:

Hon'ble THE ACTING CJ R.A.MEHTA and  
MR.JUSTICE C.K.THAKKER

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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CHANDUBHAI KANJIBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 9902 of 1996  
MR PJ KANABAR for Petitioner  
Shri Dhaval Dave, for Respondent No. 1  
SERVED BY DS for Respondent No. 2
2. Special Civil ApplicationNo 9912 of 1996  
MR PJ KANABAR for Petitioner  
Shri Dhaval Dave, for Respondent No. 1, 2, 3

3. Special Civil Application No.10266 of 1996.

Mr.A.J.Shashtri for Petitioner.

Mr.Dhaval Dave, for Respondents.

4. Special Civil Application No.10600 of 1995.

Mrs.V.A.Bhatt, for Petitioner.

Mr.D.A.Bambhania, for Respondents.

5. Special Civil Application No.10615 of 1995.

Mr.R.M.Chhaya, for Petitioner.

Mr.D.A.Bambhania, for Respondents.

6. Special Civil Application No. 3502 of 1996

Mr.Janak Japee, for Petitioner.

Mr.D.A.Bambhania, for Respondents.

7. Special Civil Application Nos.140/96 to  
143/96.

Mr.R.M.Chhaya, for Petitioners.

Mr.D.A.Bambhania, for Respondents.

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CORAM : THE ACTING CJ R.A.MEHTA and

MR.JUSTICE C.K.THAKKER

Date of decision: 27/01/97

#### ORAL JUDGEMENT

Rule. Mr.Bambhania waives service of Rule. The petitioners are members of the Home Guard Organisation and their service (Honorary service) is sought to be terminated enmass on the basis of the Government decision dt. 2nd December 1995 on the basis of which the Home Guards Headquarters had addressed a letter Annexure.A to all the District Commandants to relieve all with immediate effect and the Liason Officer of the Ahmedabad City, Sector 1,2 and 3 were directed to obtain resignations. The letter Annexure.A makes it clear that it was because of the direction of the Government in Home Department that this mass termination was started.

Rule 8 of the Bombay Home Guards Rules, 1953 provides that the term of the office of the Member of the Home Guards shall be three years. It also provides that the person appointed shall be eligible for re-appointment.

Section 6 B(1-A) of the Bombay Home Guards Act, 1947 provides that the commandant shall have the

authority to discharge any member of the Home Guards at any time subject to such conditions as may be prescribed if, in the opinion of the Commandant, the services of such members are no longer required.

Rule 9-A of the Rules provides that no member of the Home Guards shall be discharged under Section 6B(1A) unless the Commandant or Commandant General is satisfied that such Member has committed an act detrimental to the good order, welfare or discipline of the Home Guards Organisation.

In the case of Anirudhsinhji Karansinhji Jadeja vs. The State of Gujarat, JT 1995(6) SC 146, the Supreme Court held that when statutory power is conferred upon one authority and is in substance exercised by another such decision would be ultra vires and void. In the present case, statutory authorities are Commandant and Commandant General and not the Government and, therefore, the action taken on the direction of the Government would be ultra vires and void.

There is no provision in the Act or Rule which empowers the Government to direct the termination of the services of any Member of the Home Guard or all the Members of the Home Guards, as has been sought to be done by the impugned decision of the Government. This decision is clearly without authority of law and without competence and, therefore, that decision has to be quashed and set aside and the impugned termination are, therefore, declared to be void and illegal and they are set aside and all the petitioners are directed to be reinstated with their original terms and conditions of the appointment. Rule is made absolute in each of these petitions with costs.

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